

## Federal Communications Commission

DA 04-2507

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 02-40
Table of Allotments,	)	RM-10377
FM Broadcast Stations.	)	RM-10508
(Goldsboro, Smithfield, Louisburg, and	)	
Rolesville, North Carolina) <sup>1</sup>	)	

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: August 10, 2004

Released: August 12, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")<sup>2</sup> issued in response to a petition for rule making filed by New Age Communications, Inc. ("Petitioner"), licensee of Station WKIX(FM) ("WKIX"), Channel 272A, Goldsboro, North Carolina (RM-10377). Petitioner requests the reallocation of Channel 272A to Smithfield, North Carolina, as that community's second local aural transmission service, and the modification of Station WKIX's license to specify Smithfield as its community of license. Franklin Broadcasting Company ("Franklin"), the former licensee of Station WHLQ(FM), Louisburg, North Carolina, filed Comments and Counterproposal ("Counterproposal") requesting that Channel 273A be reallocated from Louisburg to Rolesville, North Carolina (RM-10508). Subsequently, Franklin's license was assigned to New Century Media Group, LLC ("New Century"). New Century has filed a formal request for Commission approval of New Century's withdrawal of the referenced Counterproposal.<sup>3</sup> We grant that request.<sup>4</sup> Petitioner filed comments reaffirming its original proposal and reiterating its intent to implement its proposal if the Commission reallocates Channel 272A to Smithfield. For the reasons stated below, we grant Petitioner's request to change its community of license to Smithfield.

2. Petitioner filed its request to reallocate Channel 272A to Smithfield, North Carolina, pursuant to

<sup>1</sup> The communities of Louisburg and Rolesville, North Carolina, have been added to the caption.

<sup>2</sup> *Goldsboro and Smithfield, North Carolina*, 17 FCC Rcd 3211 (MM 2002).

<sup>3</sup> Donald W. Curtis, the 100 percent stockholder of Petitioner and New Century, has filed an affidavit certifying, on behalf of New Century, that neither New Century nor its principals has received or will receive any consideration for the withdrawal of its counterproposal and that there is no agreement related to the withdrawal of the counterproposal. Mr. Curtis also certifies, on behalf of Petitioner, that neither Petitioner nor its principals has paid or will pay any consideration for the withdrawal of New Century's counterproposal and that there is no agreement related to New Century's withdrawal of the counterproposal.

<sup>4</sup> Our grant of the request for approval of New Century's withdrawal of the Counterproposal renders the following pleadings moot: (a) Petitioner's Motion for Leave to File Reply Comments and the Reply Comments themselves; (b) Franklin's Comments in Support of Counterproposal; (c) Petitioner's Motion for Leave to File Supplement and the Supplement itself; (d) Franklin's Opposition to (c); and (e) Petitioner's Reply to (d).

the provisions of Section 1.420(i) of the Commission's Rules,<sup>5</sup> which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>6</sup>

3. We believe that the public interest would be served by reallocating Channel 272A from Goldsboro, North Carolina, to Smithfield, North Carolina (2000 U.S. Census population of 11,510), because Smithfield would receive its first fulltime local commercial aural transmission service.<sup>7</sup> The reallocation of Channel 272A to Smithfield would not deprive Goldsboro of its sole local aural transmission outlet because Goldsboro (2000 U.S. Census population of 39,043 persons) would continue to be served by an FM station and three AM stations. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules,<sup>8</sup> we will modify the license of Station WKIX to specify operation on Channel 272A at Smithfield, North Carolina.

4. Channel 272A can be allotted to Smithfield, North Carolina, in conformity with the technical requirements of the Commission's Rules, utilizing Petitioner's requested site at the coordinates of 35-28-21 North Latitude and 78-19-43 West Longitude, with a site restriction of 4.1 kilometers (2.5 miles) south of Smithfield, North Carolina.

5. This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

6. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective September 27, 2004, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Goldsboro, North Carolina	245C
Smithfield, North Carolina	272A

7. IT IS FURTHER ORDERED, that the petition for rule making filed by New Age Communications, Inc. IS GRANTED (RM-10377).

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<sup>5</sup> 47 C.F.R. § 1.420(i).

<sup>6</sup> *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>7</sup> Daytime AM broadcast Station WMPM is the only radio broadcast station currently licensed to Smithfield.

<sup>8</sup> 47 C.F.R. § 1.420(i).

8. IT IS FURTHER ORDERED that New Century Media Group, LLC's request to withdraw the counterproposal in this proceeding IS GRANTED (RM-10508).

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of New Age Communications, Inc., for Station WKIX(FM), Goldsboro, North Carolina, IS MODIFIED to specify operation on Channel 272A at Smithfield, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, New Age Communications, Inc., licensee of Station WKIX(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for Station WKIX(FM), Channel 272A, Goldsboro, North Carolina, to Channel 272A, Smithfield, North Carolina, at the time its Form 301 application is submitted.

11. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

12. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau